

IN THE MATTER OF	:	BEFORE THE
BILL'S AUTO & TRUCK	:	HOWARD COUNTY
REPAIR, INC.	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 06-004S

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DECISION AND ORDER

On October 10, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Bill's Auto & Truck Repair, Inc., Petitioner, for variances to allow (1) a 32 square foot, 12½ feet tall commercial identification sign to be 0 feet from the Maryland Route 40 right-of-way, and (2) a 16 square foot roof sign to exceed the height of the building by two feet in a B-2 (Business – General) Zoning District, filed pursuant to Section 3.513 of Subtitle 5 of Title 3 of the Howard County Code (the "Sign Code").

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Tracy Nicolaisen testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The Petitioner is the lessee of the subject property, known as 10246-B Baltimore National Pike (Maryland Route 40), which is located in the 2nd Election District on the north side of Route 40 west of Pine Orchard Lane in Ellicott City (the "Property"). The Property is referenced on Tax Map 24, Block 1 as Parcel 8.

2. The Property is an L-shaped polygon in shape and consists of about 0.8547 acres. The Property has no frontage on Route 40 and is several hundred feet from the Route 40 right-of-way.¹ The Property is accessed from a shared right-of-way from Route 40 that runs through the center of the commercial property at 10236 Baltimore National Pike. The Property is improved with two buildings and an extensive parking area. The Petitioner's building is located in the eastern portion of the site. The building is listed in the Petitioner's application as being 80' long and 70' feet wide. The front portion of the building, where the Petitioner's office is located, has a roof that is 14 feet high from grade. The rear portion of the building has a roof that it is 17-20 feet in height.²

The Petitioner's building contains a 4' by 4' sign attached to the front mansard roof. The roof sign reads "Workhorse Custom Chassis" and extends two feet above the front roof.

3. The Petitioner proposes to install a 4' wide by 8' high freestanding changeable text sign at the boundary of the Route 40 right-of-way and the lot located at 10236 Baltimore National Pike.³ The sign will be situated on a grassy island east of the driveway entrance and about 20 feet north of the Route 40 shoulder pavement. The sign will be 12'6" tall and will read "Bill's Auto & Truck Repair Now Open 410-461-6000."

¹ The petition does not provide boundary measurements or a scale drawing of the property; distances are therefore estimated from the aerial photographs submitted and my site observations.

² The petition gives two different figures for the height of the rear portion of the building. In either case, it is higher than the proposed height of the roof sign.

³ It is unclear from the petition who owns the lot at 10236 Baltimore National Pike or whether the owner of that lot has consented to the location of the sign on his property.

4. Vicinal properties include:

(a) To the north is an R-A-15 zoned property improved by two-story wood frame dwellings which are part of the Buffs at Turf Valley residential subdivision.

(b) To the east is a B-1 zoned site improved by a one-story office building and a two-story two office building.

(c) To the south of the Property is 10236 Baltimore National Pike, which is improved with a one-story structure housing As the Porch Swing, Inc.

(d) To the west of the Property is a B-2 zoned lot containing the Centennial Square Office Park.

5. The Petitioner requests two variances: one for the proposed 32 square foot freestanding sign ("Sign 1") and one for the existing 16-square foot roof sign (Sign 2). The required setback for Sign 1 is 32 feet in relation to sign area and 25 feet in relation to sign height. The proposed Sign 1 will be 0 feet from the right-of-way. With respect to Sign 2, the Sign Code provides that "single-faced signs shall be permitted on the front profile of a building provided that the top of the sign does not exceed the height of the building, as defined in the zoning regulations." Section 3.501(c)(2)e. The proposed Sign 2 is two feet above the top of the front roof.

6. Route 40 is a non-local, multi-lane, divided highway with a posted 45 mile per hour speed limit in the area of the Property. For motorists traveling westbound on Route 40, a road intersection sign, several utility poles, advertising flags and parking lot lights obstruct the view of the required location of the sign. Motorists traveling westbound on Route 40 are prevented from viewing the required sign location by large deciduous trees and utility poles.

7. The Petitioner testified that Sign 1 could not be erected at a lower height because it would be obstructed by the Boones Lane road sign located near the southeast corner of the 10236 Baltimore National Pike property. With respect to Sign 2, she stated that the roof sign does not extend above the roof of the rear portion of the building. She testified that the Department of Inspections, Licensing and Permits ("DILP") has advised her that the sign may not exceed the height of the portion of the building on which the sign is located. She stated that a 4' by 4' sign is the smallest sign that the Workhorse dealer provides. This size sign cannot be placed any lower without interfering with pedestrians.

CONCLUSIONS OF LAW

I. Sign 1:

Section 3.513(b) of the Sign Code permits the Board of Appeals to grant variances from the provisions of the Sign Code where certain determinations are made. Based upon the foregoing Findings of Fact, I conclude as follows:

1. That there are unique physical conditions or exceptional topographical conditions peculiar to the property on which the proposed sign is to be located, including the location of existing buildings and other structures, irregularity, narrowness or shallowness of the lot, irregularity of the road right-of-way, location on a highway that has a dependency on nonlocal use, which conditions lead to practical difficulty and unnecessary hardship in complying strictly with the provisions of this subtitle.

The proposed Sign 1 cannot be located at the required setback because it will interfere with the existing parking area at the front of the 10236 Baltimore National Pike property. In addition, the location of the Property on Route 40, a non-local, multi-lane, divided highway with a speed limit of 45 mph, requires a high degree of visibility in order to allow motorists to identify the Petitioner's business and make safe turning movements. Consequently, the Property's location on a highway with a dependency on non-local use, and the location of the existing

parking area on the front property are conditions leading to practical difficulty and unnecessary hardship in complying strictly with the setback requirement of the Sign Code with respect to Sign 1, in accordance with Section 3.513(b)(1).

2. Or, that there are obstructions, such as excessive grade, building interference, structures or landscaping on abutting property or properties which seriously interfere with the visibility of a proposed sign, resulting in practical difficulties and unnecessary hardship in complying strictly with the provisions of this subtitle.

For motorists traveling westbound on Route 40, a road intersection sign, several utility poles, advertising flags and parking lot lights obstruct the view of the required location of the sign. Motorists traveling westbound on Route 40 are prevented from viewing the required sign location by large deciduous trees and utility poles. These obstructions seriously interfere with the visibility of the proposed Sign 1 if it were placed at the required location, resulting in practical difficulties and unnecessary hardship in complying strictly with the setback requirement of the Sign Code, in accordance with Section 3.513(b)(2).

3. Or, that there are historical, architectural or aesthetic characteristics which shall be considered.

There are no historical, architectural or aesthetic characteristics of the Property warranting a variance under Section 3.513(b)(3).

4. That the variance, if granted, will not adversely affect the appropriate use or development of adjacent properties, nor result in a dangerous traffic condition.

The Sign 1 is well separated from vicinal properties. The closest vicinal properties are also commercial in nature. The sign will be situated twenty or more feet from the shoulder paving of Route 40 and will not affect visibility for passing motorists. The sign is modest in size compared to others in the area and will not adversely affected vicinal properties. Consequently, the variance for Sign 1, if granted, will not adversely affect the appropriate use or development

of adjacent properties, nor result in a dangerous traffic condition as required by Section 3.513(b)(4).

5. That the requested variance is the minimum necessary to afford relief, and can be granted without substantial impairment of the intent, purpose and integrity of this subtitle.

Location of Sign 1 any further back from the right-of-way will interfere with the existing parking area. In addition, it would make visibility of the sign from Route 40 difficult. Sign 1 would be obstructed by the Boones Lane road sign if erected at a lower height. The requested variance for Sign 1 is therefore the minimum necessary to afford relief, and can be granted without substantial impairment of the intent, purpose and integrity of the Sign Code, in accordance with Section 3.513(b)(5).

6. That such practical difficulties or hardships have not been created by the applicant; provided, however, that where required findings pursuant to section 3.513 are made, the purchase or lease of the property on which a proposed sign is to be located subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

The practical difficulties are a result of the location of the Property on a non-local highway, the location of the existing parking area on the Property, and the commercial signage, trees, road signs, and utility poles in the area. The Petitioners did not create these conditions, in accordance with Section 3.513(b)(6).

II. Sign 2:

A. Preliminary Matter: The Petitioner contends that a variance from Section 3.501(c)(2)e is not necessary because, while Sign 2 admittedly exceeds the height of the front portion of the building, it does not exceed the height of the rear portion of the building. Section 3.501(c)(2)e states that "single-faced signs shall be permitted on the front profile of a building provided that the top of the sign does not exceed the height of the building, as defined in the

zoning regulations.”⁴ The issue, then, is whether the term “building” as used in Section 3.501(c)(2)e of the Sign Code refers to the entire building or only the portion of the building on which the roof is located.

The cardinal rule of statutory construction is to ascertain and carry out the real intention of the legislature. The primary source from which we glean this intention is the language itself. We first accord the words their ordinary and natural signification. We must also consider the context in which the provision appears and interpret it in the context of the entire statutory scheme. If the words of a provision are ambiguous, i.e., “reasonably capable of more than one meaning” – that is, their meaning is intrinsically unclear or their application to a particular object or circumstance is uncertain – then resort may be made to surrounding circumstances such as legislative history and prior case law. The effort is to discern the meaning and effect of the language in light of the objectives and purposes of the provision enacted. Such an interpretation must be reasonable and consonant with logic and common sense. *The Mayor and Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514 (2003).

The Sign Code does not contain a definition of the term “building.” The Code states that its purpose and scope is to:

“...regulate all exterior signs and interior window signs placed for exterior observance so as to protect property values, to protect the character of the various communities in the county, to protect health safety and morals, and to promote the public welfare. ... The principal features are the restriction of advertising to the business or use of the premises on which the sign is located and the restriction of total sign area permissible per site. ... It is intended that the display of signs will be appropriate to the land, building or use to which they are appurtenant and be adequate, but not excessive, for the intended purpose of identification or advertisement. With respect to signs advertising business uses, it

⁴ The Howard County Zoning Regulations, at Section 103.A.18, in pertinent part defines “height of building” as “the vertical distance from the mean of the lowest and highest elevation points adjoining the exterior walls of the structure to the ... deck line of a mansard roof...” The Petitioner does not dispute that Sign 2 exceeds the height of the mansard roof on the front portion of the building.

is specifically intended, among other things, to avoid excessive clutter among displays in their demand for public attention.” Section 3.500 (a) and (b).

Thus, the primary focus of the Sign Code is on aesthetics – the location, size and appearance of signs and their effect on property values and the visual character of communities. If this is the case, then it stand to reason that the restriction on the height of a roof sign relates to the portion of the building on which the roof sign sits. Were it otherwise, one could imagine a scenario in which a building – say, a hotel - contains a one-story restaurant or café attached to a multi-story structure. Under the Petitioner’s interpretation, the café roof sign could theoretically stand several stories high – a result clearly contrary to the purpose and intent of the Sign Code.

Other provisions of the Code buttress this conclusion. For example, flat wall signs and projecting signs may not extend beyond the top of the wall to which they are attached. Section 3.501(c)(2)a and b. Likewise, marquee signs may not project above or below the vertical face of the marquee. Section 3.501(c)(2)d. It is manifest that these provisions are aimed at regulating a sign in relation to the portion of the building to which the sign is attached. In this way, the sign will be “appropriate to the land, building or use to which they are appurtenant and be adequate, but not excessive, for the intended purpose of identification or advertisement.”

DILP’s interpretation is apparently consonant with this conclusion. An administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts. *Board of Physician Quality Assur. v. Banks*, 354 Md. 59, 69 (1999). I therefore conclude that term “building” as used in Section 3.501(c)(2)e of the Sign Code refers only to the portion of the building on which the roof is located. As the Petitioner’s Sign 2 admittedly exceeds the height of the front portion of the building, it violates Section 3.501(c)(2)e of the Sign Code.

B. Variance: Section 3.513(b) of the Sign Code permits the Board of Appeals to grant variances from the provisions of the Sign Code where certain determinations are made. Based upon the foregoing Findings of Fact, I conclude as follows:

1. That there are unique physical conditions or exceptional topographical conditions peculiar to the property on which the proposed sign is to be located, including the location of existing buildings and other structures, irregularity, narrowness or shallowness of the lot, irregularity of the road right-of-way, location on a highway that has a dependency on nonlocal use, which conditions lead to practical difficulty and unnecessary hardship in complying strictly with the provisions of this subtitle.

The Petitioner's only stated justification for needing a 4' tall roof sign is that it is the smallest sign that the Workhorse dealer provides. The Petitioner did not contend that there are any unique physical conditions of the Property, irregularity of the lot or road right-of-way, or other exceptional condition peculiar to the land that makes it practically difficult to erect a roof sign that does not exceed the height of the roof of the front portion of the building. Rather, the practical difficulty arises solely from the business decision of the Petitioner's affiliate to manufacture roof signs of no less than 4 feet in height.

The granting of a variance cannot be driven by the business decision of a sign manufacturer. Were it otherwise, enforcement of the Sign Code would be subject entirely to the whim of the sign-making industry, rendering the Code meaningless. A variance may only be granted if it meets the specific criteria for variances set forth in the Code. In this case, the Petitioner has failed to present any evidence that the proposed Sign 2 meets the criteria of Section 3.513(b)(1).

2. Or, that there are obstructions, such as excessive grade, building interference, structures or landscaping on abutting property or properties which seriously interfere with the visibility of a proposed sign, resulting in practical difficulties and unnecessary hardship in complying strictly with the provisions of this subtitle.

Likewise, the Petitioner has not presented any evidence that any surrounding conditions obstruct or interfere with the visibility of a roof sign erected at the height of the roof line. Rather, the Petitioner only contends that it cannot obtain a smaller sign from its dealer. This is a hardship that arises from the private business relationship of the Petitioner and its dealer, and not from the physical conditions of the area or surrounding obstructions. As stated above, this type of hardship does not constitute a "practical difficulty" within the meaning and purpose of the variance criteria. Consequently, the Petitioner has failed to show that there are any obstructions that seriously interfere with the visibility of the proposed Sign 2 if it were placed at the required location, resulting in practical difficulties and unnecessary hardship in complying strictly with the setback requirement of the Sign Code, as required by Section 3.513(b)(2).

3. Or, that there are historical, architectural or aesthetic characteristics which shall be considered.

There are no historical, architectural or aesthetic characteristics of the Property warranting a variance under Section 3.513(b)(3).

4. That the variance, if granted, will not adversely affect the appropriate use or development of adjacent properties, nor result in a dangerous traffic condition.

The Sign 2 is well separated from vicinal properties. The closest vicinal properties are also commercial in nature. The sign will be situated several hundred feet from the paving of Route 40 and will not affect visibility for passing motorists. The sign is modest in size compared to others in the area and will not adversely affected vicinal properties. Consequently, the variance for Sign 2, if granted, will not adversely affect the appropriate use or development of adjacent properties, nor result in a dangerous traffic condition as required by Section 3.513(b)(4).

5. That the requested variance is the minimum necessary to afford relief, and can be granted without substantial impairment of the intent, purpose and integrity of this subtitle.

Except that the Petitioner's dealer does not manufacture signs of lesser height, the Petitioner failed to show that a shorter sign could not be erected on the roof. A variance granted for the sole reason that the sign manufacturer does not provide a smaller-sized sign would substantially impair the intent, purpose and integrity of the Sign Code in violation of Section 3.513(b)(5).

6. That such practical difficulties or hardships have not been created by the applicant; provided, however, that where required findings pursuant to section 3.513 are made, the purchase or lease of the property on which a proposed sign is to be located subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

The alleged practical difficulties are a result of the private business relationship between the Petitioner and its dealer and are hence within the Petitioner's control. Any difficulty is therefore entirely self-created in violation of Section 3.513(b)(6).

C. Conclusion. With respect to Sign 2, the sign exceeds the height of the portion of the building on which the sign is located, in violation of Section 3.501(c)(2)e of the Sign Code. The Petitioner's variance request for Sign 2 does not meet the criteria of Sections 3513(b)(1),(2),(3), (5) or (6) and must therefore be denied.

ORDER

Based upon the foregoing, it is this 7th day of **November 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

A. That the petition of Bill's Auto & Truck Repair, Inc., for a variance to allow a 32-square foot, 12½ feet tall commercial identification sign to be 0 feet from the Maryland Route 40 right-of-way in a B-2 (Business – General) Zoning District is hereby **GRANTED;**

Provided, however, that the variance will apply only to the uses and structures as described in the petition and plan submitted and not to any other activities, uses, structures, or additions on the Property; **and it is further ORDERED:**

B. That the petition of Bill's Auto & Truck Repair, Inc., for a variance to allow a 16-square foot roof sign to exceed the height of the building by two feet in a B-2 (Business – General) Zoning District is hereby **DENIED.**

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Thomas P. Carbo

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.